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15 UNITED STATES BANKRUPTCY COURT  
16 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

17 In re  
18 TULARE LOCAL HEALTHCARE  
DISTRICT, dba TULARE REGIONAL  
19 MEDICAL CENTER,  
20 Debtor.  
21 Tax ID # 94-6002897  
Address: 869 N. Cherry Street  
22 Tulare, CA 93274  
23  
24 HEALTHCARE CONGLOMERATE  
ASSOCIATES, LLC,  
25 Plaintiff,  
26 v.  
27 TULARE LOCAL HEALTHCARE  
DISTRICT dba TULARE REGIONAL  
28 MEDICAL CENTER,

Case No. 17-13797 (Chapter 9)  
Adv. Proc. No.: 17-01095-B  
DC No.: OHS-3  
**TULARE LOCAL HEALTHCARE  
DISTRICT DBA TULARE REGIONAL  
MEDICAL CENTER’S CORRECTED  
OPPOSITION TO HEALTHCARE  
CONGLOMERATE ASSOCIATES, LLC’S  
MOTION TO STRIKE PORTIONS OF  
ANSWER [ECF 26]**  
Date: April 12, 2018  
Time: 11:30 a.m.  
Dept: Courtroom 13  
Judge: Hon. Rene’ Lastreto II

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1 Debtor and Defendant Tulare Local Healthcare District (“TLHD”) dba Tulare Regional  
2 Medical Center (“TRMC”) opposes the Creditor and Plaintiff Healthcare Conglomerate Associates,  
3 LLC’s (“HCCA”) Motion to Strike Portions of Answer (ECF 26) for the reasons that follow.

4 **I. INTRODUCTION**

5 A plaintiff’s motion to strike under Fed. R. Civ. P. 12(f) is “generally regarded with disfavor  
6 because of the limited importance of pleading in federal practice, and because they are often used as a  
7 delaying tactic.” *Springer v. Fair Isaac Corp.*, No. 14-cv-02238-TLN-AC, 2015 WL 7188234, at \*2  
8 (E.D. Cal. Nov. 16, 2015) (citation and internal punctuation omitted). But delay and sharp tactics  
9 designed to bleed a rural healthcare district dry are exactly what Plaintiff HCCA pursued by filing a  
10 motion to strike, certain of the alleged grounds for which should have been resolved between the  
11 parties. HCCA never met and conferred with TRMC about the trivial complaints raised by its motion,  
12 a practice that TRMC respectfully submits this Court should regard with extreme disfavor.

13 HCCA’s motion accomplishes little in any event. TRMC’s pleaded affirmative defenses are  
14 amply supported by fact allegations in its Answer and Counterclaim that provide fair notice to HCCA.  
15 Indeed, HCCA’s motion would be even more overtly specious had those two pleadings been prepared  
16 within the same document so that HCCA could not pretend that the eight-plus pages of factual  
17 allegations in TRMC’s Counterclaim do not exist. And should the Court happen to agree that  
18 additional factual support would help frame a given defense for later development in discovery,  
19 TRMC respectfully requests that the Court grant leave to amend consistent with Fed. R. Civ. P. 15 and  
20 Ninth Circuit authority instructing that such leave should be “freely granted” in the absence of  
21 prejudice to the plaintiff. *Id.* (citing *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 826 (9th Cir. 1979)).  
22 No prejudice can befall HCCA given the early stage of this litigation.

23 Moreover, where HCCA aims to strike defenses its says are no more than statements that  
24 TRMC cannot prove an element of its affirmative case, TRMC notes that HCCA ironically complains  
25 that TRMC has given fair notice of those contentions. Below TRMC explains how those pleadings  
26 are, in fact, proper affirmative defenses supported by factual allegations.

27 And where HCCA complains that TRMC has simply re-stated certain Federal Rules of Civil  
28 Procedure in its Answer, TRMC respectfully withdraws those pleadings in order to expend no more

1 judicial and party resources than have already been burnt by HCCA's unnecessary motion to strike.  
2 The Court should be aware, however, that the same counsel who brought this motion on behalf of  
3 HCCA have also raised "failure to state a claim on which relief may be granted" and a "reservation of  
4 defenses" as affirmative defenses at least twice in the Eastern District. One wonders who is the pot  
5 and who is the kettle.

6 Taken together, the Court should deny HCCA's motion so that the parties may return their  
7 attention to a resolution on the merits.

## 8 **II. ARGUMENT**

### 9 **A. Applicable Legal Standards Strongly Favor TRMC**

#### 10 1. HCCA Has Chosen a Disfavored Vehicle For Its Challenge to TRMC's Answer

11 A court may exercise discretion under Fed. R. Civ. P. 12(f) to "strike from a pleading an  
12 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." *Springer*, 2015  
13 WL 7188234 at \*2 (citing *Neilson v. Union Bank of Cal., N.A.*, 290 F.Supp.2d 1101, 1152 (C.D. Cal.  
14 2003)). Courts nonetheless "freely grant leave to amend stricken pleadings" absent prejudice to the  
15 opposing party. *Id.* And it is well-accepted that no prejudice will be visited on the opponent where,  
16 as here, a lawsuit stands early in discovery and the parties retain the opportunity to develop evidence  
17 supporting their claims and defenses. *Pickern v. Chico Steakhouse, LP*, No. 12-cv-02586-TLN-CMK,  
18 2013 WL 4051640, at \* 4 (E.D. Cal. Aug. 8, 2013); *Ganley v. Cty. of San Mateo*, No. C06-3923, 2007  
19 WL 902551, at \*6 (N.D. Cal. Mar. 22, 2007) (collecting authority) (quotations omitted).

20 Moreover, "because of the limited importance of pleading in federal practice, and because they  
21 are often used as a delaying tactic," Eastern District courts are reluctant to strike allegations at the  
22 pleading stage in favor of "adjudication on the merits after proper development of the factual nature of  
23 the claims in discovery." *Springer*, 2015 WL 7188234 at \*2 (citing *Whittlestone, Inc. v. Handi-Craft*  
24 *Co.*, 618 F.3d 970, 974-75 (9th Cir. 2010)); *see also Pickern*, 2013 WL 4051640 at \* 4.

25 In other words, resorting to Rule 12(f) frequently accomplishes no more than Court-supervised  
26 revision of pleadings that the parties could have worked out themselves. Even that is unnecessary  
27 here as explained further below.

28



2. The “Fair Notice” Standard Poses a Minimal Check On the Sufficiency of Pleadings of Affirmative Defenses

As HCCA points out, courts in this District apply the “fair notice” standard when evaluating whether an affirmative defense has been sufficiently pleaded. Mtn. Strike<sup>1</sup> at 2:15-16; *see Sherwin-Williams Co. v. Courtesy Oldsmobile-Cadillac, Inc.*, No. 1:15-cv-01137-MJS-HC, 2016 WL 615335, at \*3 (E.D. Cal. Feb. 16, 2016) (compiling Eastern District authority). That standard requires only that the answering party state its defense in general terms so that the nature and grounds of the defense can be understood from the pleadings. *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015); *Springer*, 2015 WL 7188234 at \*2 (citing *Kohler v. Islands Restaurants, LP*, 280 F.R.D. 560, 564 (S.D. Cal. 2012)). And when determining whether the statement of a defense provides fair notice under the circumstances, courts may look to any parties’ pleadings to understand whether there is a logical relationship between the statement of a defense and events underlying the litigation such that fair notice has been given. *Mifflinburg Telegraph, Inc. v. Criswell*, 80 F. Supp. 3d 566, 574 (M.D. Penn. 2015) (cited by HCCA for its persuasive value at Mtn. Strike at 2:8-10.) TRMC surpasses that modest standard here.

**B. TRMC Provides Fair Notice of Its Affirmative Defenses on Consideration of All the Pleadings**

Without specific citation to any authority, HCCA complains that TRMC’s third, fourth, fifth, sixth, seventh, eighth, eleventh, twelfth, thirteenth, sixteenth, and seventeenth affirmative defenses “lack any factual basis whatsoever, such that HCCA has not received fair notice of the grounds for these defenses.” (Mtn. Strike at 3:1-24.) Not so. HCCA’s challenge rests on the false premise that TRMC made no factual allegations of any kind in support of its affirmative defenses, and so must be rejected for the reasons that follow.

1. TRMC’s Affirmative Defenses of Comparative Fault (Third) and Fault of Third Parties (Fourth) Find Support in the Underlying Pleadings

TRMC’s Third Affirmative Defense states: “*Defendant is informed and believes, and thereon*

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<sup>1</sup> HCCA’s Memorandum of Points and Authorities in Support of Motion to Strike Portions of Answer (ECF 28), hereafter abbreviated as “Mtn. Strike.”

1 *alleges, that any and all damages sustained by Plaintiff, by reason of the conduct, acts, breaches,*  
2 *matters, happenings or events referred to in the Complaint, were directly and proximately caused*  
3 *and/or contributed to by the negligence, carelessness or fault of Plaintiff, and not by any negligence,*  
4 *carelessness or fault on the part of Defendant.” (ECF 8 at 7:20-25.)*

5 TRMC’s Fourth Affirmative Defense states: “*Defendant is informed and believes, and*  
6 *thereon alleges that any and all damages purported to have been sustained by Plaintiff, by reasons of*  
7 *the conduct, acts, breaches, matters, happenings or events referred to in the Complaint, were directly*  
8 *and proximately caused and/or contributed to by the negligence, conduct, carelessness or fault of*  
9 *third parties, other than Defendant.” (Id. at 7:26-8:3.)*

10 These statements adequately put HCCA on notice of TRMC’s contention that any damages of  
11 which HCCA complains were, in fact, caused by HCCA or a third-party to this litigation and not by  
12 TRMC. Such general terms find support in the operative pleadings in this case.

13 For example, HCCA claims that TRMC breached a Management Services Agreement and  
14 related agreements (“MSA”) executed with HCCA, thereby causing damage to HCCA. (Complaint<sup>2</sup>  
15 ¶¶ 3, 44.) Among the claims of breach is TRMC’s alleged refusal to pay certain fees owed HCCA  
16 exceeding \$500,000. (Id. ¶ 38.) However, TRMC alleges that no such sums are owed to HCCA, and  
17 in any event, it was actions taken by HCCA that left TRMC without sufficient funds to cover its  
18 liabilities (Counterclaim<sup>3</sup> ¶ 16), including unauthorized transactions made by HCCA for personal gain.  
19 (Id. ¶¶ 17-22.) These fact allegations by TRMC sufficiently plead the nature and grounds of its Third  
20 Affirmative Defense of Comparative Fault in the context of all of the parties’ pleadings.

21 Likewise, factual support for TRMC’s Fourth Affirmative Defense of Fault of Third Parties  
22 derives, *e.g.*, from its allegation that HCCA’s agent, Dr. Yorai Benzeevi, directed at least \$10.23  
23 million of these unauthorized transfers. (Id. ¶¶ 21-22.) To the extent the Court later finds that  
24 Dr. Benzeevi did not act as an agent of HCCA when directing that transfer, his actions will

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25 <sup>2</sup> HCCA’s Complaint for Breach of Contract and Declaratory Relief (hereinafter “Complaint”) is  
26 attached within Exhibit A to TRMC’s Notice of Removal of Lawsuit Pending in State Court to  
27 Bankruptcy Court (28 U.S.C. § 1452). (ECF 1.) The Complaint and its exhibits begin on page 9 of  
28 Exhibit A.

<sup>3</sup> Counterclaim Against HCCA (hereinafter “Counterclaim”) filed at ECF 9.

1 nonetheless be those of a third-party who robbed TRMC of funds needed to pay HCCA or its  
2 creditors. TRMC's Fourth Affirmative Defense of Fault of Third Parties is also adequately pleaded.

3 2. TRMC's Affirmative Defense of Mitigation (Fifth) Finds Support in the Underlying  
4 Pleadings

5 TRMC's Fifth Affirmative Defense states: "*Plaintiff has failed to reasonably mitigate their*  
6 *damages, if any. As a result, Plaintiff is barred from recovery on his Complaint.*" (ECF 8 at 8:4-7.)

7 An assertion that HCCA held a duty to mitigate any damages states an affirmative defense.  
8 *Deleon v. Elite Self Storage Mgmt., LLC*, No. 2:15-cv-02087-MCE-EFB, 2016 WL 881144, at \*3  
9 (E.D. Cal. Mar. 8, 2016). "Courts have held that a generalized statement meets [D]efendant's  
10 pleading burden with respect to the affirmative defense of damage mitigation." *Id.* (citing *Lexington*  
11 *Ins. Co. v. Energetic Lath & Plaster, Inc.*, No. 2:15-cv-00861-KJM, 2015 WL 5436784, at \*13 (E.D.  
12 Cal. Sept. 15, 2015)). That circumstance is particularly so "where discovery has barely begun the  
13 failure to mitigate defense is sufficiently pled without additional facts." *Ganley*, 2007 WL 902551 at  
14 \*6 (collecting authority) (citations omitted).

15 Here, this case stands at the start of discovery and so, as in the authority cited above, TRMC's  
16 statement of its mitigation defense need be defined in no more than general terms putting HCCA on  
17 notice that this defense will be developed as the case proceeds. Facts alleged in TRMC's  
18 Counterclaim provide sufficient support in any event. For example, TRMC states that HCCA  
19 intentionally engaged in gross, wholesale mismanagement of TRMC's finances that exacerbated, if  
20 not outright created, the poor financial state in which TRMC finds itself. (Counterclaim ¶ 2; *see also*  
21 *id.* ¶ 26 (HCCA intentionally inflates employee staffing and payroll).) These facts sufficiently show  
22 how HCCA might have behaved differently in order to mitigate any alleged injury to itself.

23 3. TRMC's Affirmative Defenses of Waiver (Sixth), Estoppel (Seventh), and Laches  
24 (Eighth) Find Support in the Underlying Pleadings

25 TRMC's Sixth Affirmative Defense states: "*As to the cause of action allegedly set forth in the*  
26 *Complaint, Plaintiff waived its right, if any, to assert such a cause of action against Defendant.*" (ECF  
27 8 at 8:8-11.)

28 TRMC's Seventh Affirmative Defense states: "*Based on the conduct of Plaintiff, and on*

1 *information and belief, Plaintiff is estopped from asserting any of the alleged causes of action as set*  
2 *forth in the Complaint.” (Id. at 8:12-15.)*

3 TRMC’s Eighth Affirmative Defense states: “*Plaintiff is barred from maintaining the alleged*  
4 *causes of action by the doctrines of laches, accord and satisfaction.” (Id. at 8:16-19.)*

5 Because an affirmative defense has been sufficiently pleaded where the plaintiff simply has  
6 fair notice of the defense, courts recognize that “[f]or well-established defenses, merely naming them  
7 may be sufficient.” *Springer*, 2015 WL 7188234 at \*4 (declining to dismiss waiver, estoppel, and  
8 laches defenses despite finding them “vague and general”); *see also Deleon*, 2016 WL 881144 at \*2  
9 (declining to dismiss waiver and laches defenses on same grounds); *Ganley*, 2007 WL 902551 at \*2  
10 (collecting authority) and \*6 (declining to dismiss waiver defense stated in a single sentence). The  
11 Court should so hold here as well given that TRMC has spelled out the application of the well-known  
12 defenses of waiver, estoppel, laches, and accord and satisfaction in the concurrently-filed  
13 Counterclaim. Those defenses find support in the underlying pleadings in any event for the reasons  
14 that follow:

15 (a) *Waiver*. A party intentionally relinquishes a known right where it fails to exercise it, either  
16 expressly or by conduct inconsistent with an intent to enforce that right. *Waller v. Truck Ins.*  
17 *Exchange, Inc.*, 900 P.2d 619, 11 Cal.4th 1, 31 (1995). Here, HCCA claims that TRMC failed to pay  
18 sums owed HCCA under the parties’ Management Services Agreement (“MSA”). (*See, e.g.,*  
19 *Complaint* ¶¶ 3, 28, 44.) TRMC responds by alleging that actions taken by HCCA left TRMC without  
20 sufficient funds to cover its liabilities (Counterclaim ¶ 16), including unauthorized transactions made  
21 by HCCA for personal gain. (*Id.* ¶¶ 17-22.) The defense of waiver applies because HCCA was  
22 undeniably aware of the MSA’s payment terms at the time of its execution in May 2014 (*id.* ¶ 1), and  
23 yet HCCA intentionally failed to keep the TRMC board of directors apprised of significant financial  
24 losses reflected in TRMC’s balance sheet until three-and-a-half years later in September 2017. (*Id.* ¶  
25 16.) HCCA’s alleged conduct demonstrates conduct inconsistent with an intent to enforce the  
26 payment terms of the MSA, and thus puts HCCA on fair notice of the grounds of TRMC’s affirmative  
27 defense of waiver.

28 (b) *Estoppel*. Equitable estoppel bars a plaintiff from asserting a cause of action where (1) the

1 party to be estopped was apprised of the facts, (2) the party to be estopped intended by conduct to  
2 induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance  
3 was intended, (3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting  
4 estoppel suffered injury in reliance on the conduct. *Medina v. Bd. of Retirement, Los Angeles Cty.*  
5 *Employees Retirement Assoc.*, 5 Cal.Rptr.3d 634, 112 Cal.App.4th 864, 868 (2003). Here, as with  
6 waiver, TRMC alleges that HCCA intentionally refused to convey the fact of TRMC's financial  
7 situation to HCCA and that "the first time" the board became aware of those facts was long after  
8 damage had been done to TRMC. (Counterclaim ¶ 16.) TRMC further alleges that HCCA intended  
9 for the TRMC board to rely on an appearance of financial calm in order to permit HCCA and its  
10 agents time to bilk millions from TRMC coffers, all to the detriment of TRMC. (*Id.* ¶ 15 (alleging  
11 that HCCA's "delay tactics . . . made it impossible for the current Board to fulfill the responsibilities  
12 as Directors of a public hospital district."); *see also id.* ¶¶ 15-22 (alleging damage done to TRMC  
13 while HCCA stood silent).) These pleadings put HCCA on fair notice of TRMC's estoppel defense.

14 (c) *Laches*. The doctrine of laches applies as a bar when a party unreasonably delays in  
15 asserting a right, thereby causing prejudice to the adverse party as a result of the delay. *Bono v. Clark*,  
16 128 Cal.Rptr.2d 31, 103 Cal.App.4th 1409, 1417 (2002). The "defense of laches requires  
17 unreasonable delay *plus* either acquiescence in the act about which plaintiff complains *or* prejudice to  
18 the defendant resulting from the delay." *Id.* at 1418 (emphasis added). Here, TRMC alleges that  
19 HCCA intentionally waited up to three-and-a-half years before alerting the TRMC board of directors  
20 to the truth of TRMC's financial situation, resulting in significant prejudice to TRMC as its coffers  
21 had been depleted beyond repair. (*See, e.g.*, Counterclaim ¶¶ 15-16; *see also id.* ¶ 18 (contrary to  
22 TRMC's belief at the time, HCCA has redirected \$3 million in hospital operating funds to itself).) In  
23 other words, TRMC's pleadings establish that HCCA's long period of delay in providing necessary  
24 information to TRMC caused resulting prejudice to TRMC in the form of significant financial losses,  
25 making that delay unreasonable on its face. TRMC may thus properly defend that HCCA's demand in  
26 this Court for payment under the terms of the MSA is barred by the doctrine of laches.

27 (d) *Accord and Satisfaction*. The affirmative defense of accord and satisfaction posits that the  
28 parties formed a substitute contract for the settlement of a debt by some alternative other than the full

1 payment contemplated by an original contract, and where consideration for an accord can be the  
2 resolution of the disputed claim. *Bill Finance Co. v. U-States Forwarding Servs. Corp.*, 115  
3 Cal.Rptr.2d 312, 95 Cal.App.4th 111, 126 (2002). A defendant asserting the defense of accord and  
4 satisfaction must establish (1) that there was a *bona fide* dispute between the parties, (2) that the  
5 debtor made it clear that acceptance of what he tendered was subject to the condition that it was to be  
6 in full satisfaction of the creditor's unliquidated claim, and (3) that the creditor clearly understood  
7 when accepting what was tendered that the debtor intended such remittance to constitute payment in  
8 full of the particular claim in issue. *Id.* (citation and internal quotation omitted). TRMC submits that,  
9 to the extent that the Court will not sustain the accord and satisfaction defense under *Springer* and  
10 cases cited above, TRMC be granted leave to amend its statement of this defense. *See* 2015 WL  
11 7188234 at \*2 (declining to dismiss well-established defenses despite finding them “vague and  
12 general”).

13 4. TRMC’s Affirmative Defense of Independent, Intervening or Superseding Cause  
14 (Twelfth) Finds Support in the Underlying Pleadings

15 TRMC’s Twelfth Affirmative Defense states: “*As to the cause of action allegedly set forth in*  
16 *the Complaint, Plaintiff is barred from any recovery against Defendant by reason of Plaintiff’s actions*  
17 *and conduct which constituted an unforeseeable, independent, intervening and/or superseding cause*  
18 *of the damages, if any, which resulted to Plaintiff herein.*” (ECF 8 at 9:8-13.)

19 HCCA purports to allege causes of action for breach of the MSA and for a declaration that a  
20 provision of that contract has been triggered, thus entitling HCCA to monetary relief. (Complaint  
21 ¶¶ 1-4 and ¶¶ 45-49.) HCCA further alleges, without elaboration, that it is entitled to “all lawful  
22 damages flowing” from the purported contract breaches alleged in the Complaint. (*Id.* ¶ 44.) The face  
23 of HCCA’s pleadings thus do not specify whether HCCA will only seek actual damages or if it will  
24 also pursue some form of special or punitive damages.

25 In the event that HCCA clarifies during discovery that it seeks special damages, TRMC has  
26 asserted that any such damages are not recoverable because they were not foreseeable and not  
27 proximately caused by the alleged contract breaches. *Ash v. North American Title Co.*, 168  
28 Cal.Rptr.3d 499, 223 Cal.App.4th 1258, 1275-76 (2014) (recognizing that the tort principle of an



1 intervening or superseding cause applies to special damages in a contract action). Factual support for  
 2 the allegation that HCCA or a third-party, in fact, caused any damage to HCCA is outlined in Section  
 3 II.B.1 above (detailing factual allegations supporting TRMC's defenses of comparative fault and fault  
 4 of third-parties). It was likewise not foreseeable that special damages might flow out of HCCA's  
 5 contractual relationship with TRMC at least because HCCA stood in a fiduciary relationship to  
 6 TRMC, yet breached its duties by secretly defrauding TRMC through acts of misrepresentation and  
 7 concealment, among other acts unknown to TRMC at the time they were committed. (*See, e.g.,*  
 8 Counterclaim ¶¶ 34-37, 49-52, 63-65.)

9 5. TRMC's Affirmative Defenses of Illegal Contract (Eleventh), Unclean Hands  
 10 (Thirteenth), and Unconscionable Contract (Sixteenth) Find Support in the Underlying  
Pleadings

11 TRMC's Eleventh Affirmative Defense states: "*As to the causes of action allegedly set forth*  
 12 *in the Complaint, Plaintiff is barred from any recovery against Defendant by reason that the alleged*  
 13 *agreement, if any, is unenforceable as contrary to an express provision of law, public policy or good*  
 14 *morals.*" (ECF 8 at 9:3-7.)

15 TRMC's Thirteenth Affirmative Defense states: "*As to the cause of action allegedly set forth*  
 16 *in the Complaint, Plaintiff is barred from asserting such causes of action against Defendant by the*  
 17 *equitable doctrine of unclean hands on the part of Plaintiff and its agents.*" (*Id.* at 9:14-18.)

18 TRMC's Sixteenth Affirmative Defense states: "*As to the cause of action allegedly set forth*  
 19 *in the Complaint, Plaintiff is barred from any recovery against Defendant by reason that the contracts*  
 20 *at issue are unconscionable and void based on public policy.*" (*Id.* at 9:27-10:3.)

21 TRMC's Eleventh, Thirteenth, and Sixteenth Affirmative Defenses each find support in factual  
 22 allegations outlining the misdeeds of HCCA. To wit:

23 (a) *Illegal Contract.* California courts will not enforce a contract tainted with illegality or  
 24 permit recovery for illegal acts. *Pacific Tel. & Tel. Co. v. MCI Telecommunications Corp.*, 649 F.2d  
 25 1315, 1319 (9th Cir. 1981) (*citing Lewis & Queen v. N. M. Ball Sons*, 308 P.2d 713, 48 Cal.App.2d  
 26 141, (1957)). Here, the totality of facts alleged by TRMC points to former TRMC leadership entering  
 27 into grossly unfavorable agreements with HCCA (including the MSA at-issue here) that all-but-  
 28 assured the fleecing of TRMC assets by HCCA. (*See, e.g.,* Counterclaim ¶¶ 9-11 and ¶¶ 17-22.) And

1 after the public ousted two former TRMC board members, HCCA allegedly interfered with the  
2 confirmation of replacements newly-elected to their board seats. (*Id.* ¶¶ 13-16.) Those circumstances  
3 alleged by TRMC foreshadow former TRMC officers or employees making agreements with HCCA  
4 in which they were financially interested. If borne out in discovery, such facts would make the MSA  
5 void and unenforceable as a violation of California Government Code § 1090. *Torres v. City of*  
6 *Montebello*, 183 Cal.Rptr.3d 801, 234 Cal.App.4th 382, 401-02 (2015).

7 Moreover, California law allows a party to raise the issue of a contract's illegality at any time.  
8 *In re Tamen*, 22 F.3d 199, 204-05 (9th Cir. 1994) (citation omitted). HCCA's motion thus oddly  
9 complains that TRMC gave more notice of its illegal contract defense than is required.

10 (b) *Unclean Hands*. The doctrine of unclean hands can operate as a defense where the  
11 plaintiff "acted unconscionably, in bad faith, or inequitably in the matter in which the plaintiff seeks  
12 relief." *Canupp v. Children's Receiving Home of Sacramento*, 181 F.Supp.3d 767, 797 (E.D. Cal.  
13 2016) (citing *Salas v. Sierra Chemical Co.*, 327 P.3d 797, 59 Cal.4th 407, 432 (2014)). Here, TRMC  
14 alleges that HCCA engineered TRMC's acceptance of the unconscionable contract terms in the MSA  
15 at-issue in this lawsuit (Counterclaim ¶¶ 9-11) and then engaged in a pattern of self-dealing despite  
16 contractual obligations to faithfully tend to TRMC's finances. (*Id.* ¶¶ 17-22.) Those facts provide fair  
17 notice of the basis of TRMC's unclean hands affirmative defense.

18 Moreover, as with the other well-established defenses discussed above (*see* Section II.B.3),  
19 courts recognize that merely naming an unclean hands defense can suffice. *Deleon*, 2016 WL 881144  
20 at \*2; *Springer*, 2015 WL 7188234 at \*4. TRMC's pleadings surpass that standard in any event.

21 (c) *Unconscionability*. Unconscionability has both a "procedural" element focused on the  
22 manner in which a contract was negotiated and the relative bargaining strength of the parties; and a  
23 "substantive" element focused on the actual terms of the subject contract. *American Software, Inc. v.*  
24 *Ali*, 54 Cal.Rptr.2d 477, 46 Cal.App.4th 1386, 1390 (1996). The prevailing view holds that both  
25 elements must be present for a court to refuse to enforce a contract on unconscionability grounds,  
26 although those elements need not be present to the same degree. *Id.*

27 As to the procedural component of its unconscionability defense, TRMC has alleged that the  
28 agreements at the heart of this dispute were "presented to [TRMC] on short notice and were executed



1 under duress due to threats that the District would become bankrupt and would be forced to close  
2 absent execution of the Agreements.” (Counterclaim ¶ 11.) As to the substantive element, TRMC  
3 alleges that such inequality of bargaining position facilitated a host of unconscionable contract terms  
4 overwhelmingly drawn to the benefit of HCCA (*id.* ¶ 1), including the fee provisions that buttress  
5 HCCA’s contract claims in this case. (*Id.* ¶ 10 (specifically identifying allegedly unconscionable  
6 contract terms).) Together, these pleadings adequately supply fair notice of TRMC’s  
7 unconscionability defense.

8 6. TRMC’s Affirmative Defense of Unconstitutional Clauses (Seventeenth) Finds  
9 Support in the Underlying Pleadings

10 TRMC’s Seventeenth Affirmative Defense states: “*The Complaint, and the causes of action*  
11 *allegedly stated therein, is barred because the provisions contained in the contract violate the*  
12 *California Constitution.*” (ECF 8 at 10:4-7.)

13 The California Constitution prohibits the “gift of public funds” in order “to ensure that public  
14 funds are spent only on public purposes.” *Jordan v. Cal. Dep’t of Motor Vehicles*, 123 Cal.Rptr.2d  
15 122, 100 Cal.App.4th 431, 453 (2002). The prohibition on “gifts of public funds” appears in Article  
16 XVI, § 6 of the California Constitution, which states: “The Legislature shall have no power to . . .  
17 make any gift or authorize the making of any gift, of any public money or thing of value to any  
18 individual, municipal or other corporation whatever . . . .” Courts have invoked Article XVI, § 6 to,  
19 *e.g.*, strike excessive fees paid without a public purpose, *Jordan*, 100 Cal.App.4th at 451, and reverse  
20 the lease of a public airport and associated facilities for \$1 per year. *Allen v. Hussey*, 225 P.2d 674,  
21 101 Cal.App.2d 457, 474-75 (1950).

22 Those principles apply in this case. TRMC is a statutorily authorized corporation of the state,  
23 Cal. Health & Saf. Code, §§ 32100 *et. seq.*, and its powers are statutorily granted by the legislature.  
24 *See* Cal. Health & Saf. Code, § 32121 and. §§ 32300 *et. seq.* As such, TRMC is subject to the  
25 constitutional prohibition against gifts of public funds set forth in Article XVI, § 6 of the state charter.

26 As detailed above in Section II.B.5 and elsewhere, TRMC alleges that multiple provisions in  
27 the parties’ MSA set out an arrangement that is wholly one-sided and favorable to HCCA. For  
28 example, TRMC points to a mandatory “Management Fee” payable to HCCA at the tune of \$225,000

1 per month (*i.e.*, \$2.7 million per year). (Counterclaim ¶ 10.) TRMC also highlights a “Termination  
2 Fee” payable to HCCA within 5 days of HCCA terminating the MSA for any “default” in the  
3 judgment of HCCA “or any other reason[.]” (*Id.*) The face of the MSA thus states that, if triggered,  
4 the Termination Fee TRMC “shall” pay amounts to \$70,000 “first increased by CPI and then  
5 multiplied by the remaining number of months in the term (not to exceed 120 months), discounted to  
6 present value using the discount rate of the Federal Reserve Bank of San Francisco at the time of  
7 termination plus 1%.” (*Id.*) In other words, if HCCA decides to terminate the MSA after bilking the  
8 people of Tulare, TRMC still owes a base payment of up to \$8.4 million as enhanced through  
9 modifiers specified in the MSA. TRMC contends that these and other provisions amount to gifts of  
10 public funds with no public purpose, and so are unconstitutional under Article XVI, § 6.

11 These pleadings adequately supply fair notice of TRMC’s unconstitutional contract defense.

12 7. The Motion to Strike Should Be Denied As To TRMC’s Defenses Attacked on  
13 Grounds That They Lack Factual Support

14 Taken together, The Motion to Strike should be denied with respect to TRMC’s third, fourth,  
15 fifth, sixth, seventh, eighth, eleventh, twelfth, thirteenth, sixteenth, and seventeenth affirmative  
16 defenses. At minimum, leave to amend should be granted as TRMC has made a showing that it can  
17 state additional facts supporting these defenses.

18 C. HCCA Mischaracterizes TRMC’s Defenses As Mere Statements That HCCA Cannot  
19 Prove an Element of Its Affirmative Case, and Striking Them Will Only Encourage  
20 Further Irrelevant Motions from HCCA

21 It is hornbook law that “[a]n affirmative defense is an ‘assertion of facts and arguments that, if  
22 true, will defeat the plaintiff’s . . . claim, even if all the allegations in the complaint are true.’”  
23 *Deleon*, 2016 WL 881144 at \* 1 (*quoting* Black’s Law Dictionary (10th ed. 2014)). Nonetheless,  
24 without citation to any case law specific to the legal doctrines in question, HCCA charges that  
25 TRMC’s ninth, tenth, fourteenth, fifteenth, and eighteenth affirmative defenses are not affirmative  
26 defenses, but rather, statements that HCCA cannot meet its burden on one or more elements of a cause  
27 of action. (Mtn. Strike at 4:14-17.) In some cases, that position is belied by ample authority  
28 establishing the challenged doctrines as affirmative defenses that must be pleaded in answer to a

1 complaint. In other cases, striking a “negative defense” simply because it was labeled as affirmative  
2 “will serve no purpose other than to encourage the filing of other unnecessary motions like this one  
3 that compel the expenditure of time and resources litigating irrelevant issues.” *Burton v. Nationstar*  
4 *Mortgage, LLC*, No. 1:13-cv-00307-LJO-JLT, slip. op. at \*8 (E.D. Cal. Sept. 3, 2013) (citation and  
5 internal quotation marks omitted).<sup>4</sup>

6 The Court should deny HCCA’s Motion to Strike with respect to the following defenses:

7 (a) *Lack of Consideration (Ninth)*.<sup>5</sup> Lack of consideration is an affirmative defense that must  
8 be alleged in an answer. *Nat’l Farm Workers Service Ctr., Inc. v. M. Caratan, Inc.*, 194 Cal.Rptr.  
9 617, 146 Cal.App.3d 796, 808 (1983). TRMC’s assertion of this defense puts HCCA on notice that it  
10 will take discovery probing whether promises supposedly made by TRMC under one or more of the  
11 agreements underlying HCCA’s contract claims were gratuitous, unsupported by consideration, or  
12 purportedly exchanged for past efforts. TRMC has already called the formation of the MSA into  
13 question by alleging that it was executed under duress. (Counterclaim ¶ 11.)

14 (b) *Discharge of Obligations (Tenth)*.<sup>6</sup> “When a party’s failure to perform a contractual  
15 obligation constitutes a material breach of the contract, the other party may be discharged from its  
16 duty to perform under the contract.” *Brown v. Grimes*, 120 Cal.Rptr.3d 893, 192 Cal.App.4th 265,  
17 277-78 (2011). A defendant’s contention that the plaintiff’s contract claim is barred by material  
18 breaches of its own must be pleaded as an affirmative defense. *Deleon*, 2016 WL 881144 at \*4 (citing  
19 *Commercializadora Recmaq v. Hollywood Auto Mall, LLC*, No. 12-cv-0945, 2014 WL 3628272, at  
20 \*18 (S.D. Cal. July 21, 2014)). Here, as discussed in Section II.B above, TRMC alleges that HCCA’s  
21 fraudulent and self-dealing acts in violation of its contractual and fiduciary duties to TRMC amount to

22  
23 <sup>4</sup> See Declaration of Shane G. Smith (“Smith Decl.”) filed concurrently herewith at Ex. A.

24 <sup>5</sup> TRMC’s Ninth Affirmative Defense states: “As to the causes of action allegedly set forth in the  
25 Complaint, Plaintiff is barred from any recovery against Defendant by reason that certain purported  
26 agreements, if any, were not supported by consideration.” (ECF 8 at 8:20-24.)

27 <sup>6</sup> TRMC’s Tenth Affirmative Defense states: “By satisfying all of the terms, conditions, covenants  
28 and requirements of the agreement between Plaintiff and Defendant, Defendant has fully performed its  
obligations under the terms of the agreement. By virtue of said performance, Defendant have  
discharged any and all express or implied obligations purportedly owed to Plaintiff by virtue of or  
pursuant to the agreement.” (ECF 8 at 8:25-9:2.)

1 a material breaches of the MSA by HCCA. (*See, e.g.,* Counterclaim ¶¶ 17-22.) As such, HCCA has  
2 fair notice that TRMC will contend that those breaches by HCCA discharge or excuse any dependent  
3 obligation for TRMC to perform under the MSA.

4 (c) *No Damage to Plaintiff (Fourteenth)*<sup>7</sup> and *Offset (Fifteenth)*.<sup>8</sup> TRMC’s “no damage” and  
5 “offset” defenses are species of its affirmative defense of comparative fault discussed in Section II.B.1  
6 above. Here, TRMC simply specifies that HCCA is responsible for all or part of any damages HCCA  
7 purportedly incurred. TRMC will advance this theory to counter HCCA’s contract damages claims  
8 whether or not it is affirmatively pleaded in its Answer.

9 (d) *Inadequate Consideration (Eighteenth)*.<sup>9</sup> TRMC’s “inadequate consideration” defense is a  
10 species of its affirmative defense of unconscionability discussed in Section II.B.5 above. Here,  
11 TRMC specifies that HCCA may recover nothing because any alleged consideration supporting the  
12 MSA is unconscionably inadequate. The defense amounts to a fraud allegation that must be proven by  
13 the party making it. *Cohn v. Bugas*, 116 Cal.Rptr. 810, 42 Cal.App.3d 381, 391 (1974). HCCA has  
14 fair notice of the basis for this defense for the reasons outlined above.

15 Finally, even if the Court is inclined to strike any of the above defenses as mere statements that  
16 HCCA will fail to meet its burden of persuasion, HCCA’s own authority confirms that TRMC “will be  
17 able to directly negate [HCCA’s] claims by law or fact in any event.” *Gonzalez v. Dept. (Bureau) of*  
18 *Real Estate*, No. 2:15-cv-02448-GEB-GGH-PS, at \*8 (E.D. Cal. June 7, 2017) (cited in Mtn. Strike at  
19 4:18-22). Indeed, TRMC may re-raise any stricken defense in a subsequent stage of the case in the  
20 absence of prejudice to HCCA. *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1023 (9th Cir. 2010)

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22 <sup>7</sup> TRMC’s Fourteenth Affirmative Defense states: “The Complaint, and the cause of action allegedly  
23 stated therein, is barred because Plaintiff has not suffered any actual damages and merely created all  
of the damages at issue in the Complaint.” (ECF 8 at 9:19-22.)

24 <sup>8</sup> TRMC’s Fifteenth Affirmative Defense states: “The amount of damages, if any, due from  
25 Defendant to Plaintiff must be reduced or offset by the amount of damages owed from Plaintiff to  
Defendant.” (ECF 8 at 9:23-26.)

26 <sup>9</sup> TRMC’s Eighteenth Affirmative Defense states: “Defendant is informed and believes and thereon  
27 alleges that the consideration for the alleged agreement is inadequate and not fair and reasonable  
28 under the circumstances and by virtue thereof, Plaintiff is barred from any recovery herein.” (ECF 8  
at 10:8-12.)

(cited in Mtn. Strike at 2:15-16). It is difficult to see how HCCA might be prejudiced in the future given that TRMC’s Answer and Counterclaim provide notice of these attack points that TRMC will pursue.

For all these reasons, the Court should deny HCCA’s Motion to Strike with respect to TRMC’s ninth, tenth, fourteenth, fifteenth, and eighteenth affirmative defenses. At minimum, leave to amend should be granted as TRMC has made a showing that it can state additional facts supporting these defenses.

**D. TRMC Withdraws Certain Defenses In Order to Conserve Judicial Resources**

In light of the availability of Fed. R. Civ. P. 15 and 56, TRMC withdraws its first (failure to state a claim) and nineteenth (reservation of defenses) affirmative defenses. It is unclear, however, what purpose has been served by HCCA’s motion to strike these statements from TRMC’s Answer. Twice before has HCCA’s counsel signed answers that plead these very defenses.<sup>10</sup> That HCCA would now take issue with them shows again the thoughtless and aggressive nature of their tactics against TRMC in this case.

**III. CONCLUSION**

For all of the foregoing reasons, TRMC respectfully requests that HCCA’s Motion to Strike be denied.

Dated: March 29, 2018

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<sup>10</sup> See Smith Decl., ¶ 5, Ex. B at 6 ¶¶ 2 and 17, and ¶ 6, Ex. C at 13 ¶¶ 104 and 106.